

### **REMARKS/ARGUMENTS**

This response is filed with a Request for Continued Examination. Reconsideration of this Application and entry of this Amendment is respectfully requested.

Claims 1, 2, and 4-10 are pending in this application. Claims 3 and 11-44 have been canceled.

#### **Claim Objections**

The Examiner had objected to Claim 4 for informalities. In accordance with the Examiner's request, Claim 4 has been amended to depend from claim 1.

#### **Rejections Under 35 U.S.C. §112**

The Examiner had rejected to Claim 8 for insufficient antecedent basis. Claim 8 has been amended to recite that the complex comprises ionic compounds rather than the intermediate comprises an ionic complex. Support for the amendment may be found, *inter alia*, in the claims as originally filed.

#### **Rejections Under 35 U.S.C. §102**

The Examiner had rejected Claims 1, 4, and 6-8 under 35 U.S. C. §102(b) as anticipated by Kovacs-Hadady et al. The Applicants respectfully traverse. In order to expedite prosecution only, the Applicant has amended the only independent claim, Claim 1, to recite that the solution having the complex formed by the probe molecule and the agent has a pH greater than 5.0. Support for the amendment may be found, *inter alia*, in Example II on page 18, lines 2-4 of the specification wherein it is stated that Eosin Y contains a planar hydrophobic ring having two anionic charges at a pH above 5. Further, in Example IV at page 26, lines 8-9, experiments with benzethonium chloride are described. The pHs of those solutions are 7.4 and 7.8, with an increase in activity above pH 7.8.

At a pH of less than 5, Eosin Y, among other probe molecules suitable for the present invention, would not be in optimal confirmation for the claimed assays since it

would reduce or eliminate the Eosin Y's anionic charges. On the other hand, Kovacs-Hadady states the optimum pH for spectrophotometric measurements is 4.1-5.0 (see page 736). Indeed, since Claim 1 now requires pH to be greater than 5, Kovacs-Hadady actually teaches away from the present invention. Kovacs-Hadady did not disclose or render obvious the original claims and, as amended, Kovacs-Hadady teaches away from the claims. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

**Rejections Under 35 U.S.C. §103**

The Examiner had rejected Claims 1, 2, 4, 6-8 and 10 under 35 U.S. C. §103(a) as unpatentable over Kovacs-Hadady et al. (1998), in view of Park et al. (US 6,316,669 B1). As discussed, not only does Kovacs-Hadady not disclose or render obvious the invention, it teaches away from the presently-amended claims. Park does not remedy the shortcomings of Kovacs-Hadady. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

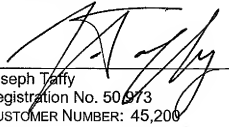
The Examiner also had rejected Claims 1, and 4-10 under 35 U.S. C. §103(a) as unpatentable over Kovacs-Hadady et al. (1998), in view of Horonick et al. (US 3,678,151). Again, Kovacs-Hadady teaches away from the presently-amended claims and Horonick does not remedy its shortcomings. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

**CONCLUSIONS**

The Applicant respectfully requests reconsideration and withdrawal of all objections and rejections and that a Notice of Allowance be issued for this application. The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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